

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

WP(Crl) No.32/2021  
CrlM Nos.2141/2021 &  
965/2021

*Reserved on 06.12.2021  
Pronounced on 09.12.2021*

Ali Hayder

...Petitioner(s)

Through:- Mr. Sheikh Altaf Hussain, Advocate.

**Versus**

Union Territory of Jammu and Kashmir  
and others

...Respondent(s)

Through:- Mr. Bhanu Jasrotia, GA.

**Coram :- HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE**

**JUDGMENT**

1. The petitioner, namely, Ali Hayder son of Abdul Aziz resident of Village Gundha Tehsil Khawas, District Rajouri (hereinafter referred to as 'detenue') has filed this habeas corpus petition through his copusin, questioning the detention order bearing No.DMR/INDEX-02 of 2021 dated 20.05.2021 slapped on him by respondent No.2 i.e., the District Magistrate, Rajouri, under Section 8 of the J&K Public Safety Act, 1978.

2. It is contended in the petition that the detenue has never committed any criminal/anti-national offence however he along with three other persons has been implicated in a false and frivolous case registered with Police Station Budhal, Rajouri.

3. It is submitted by learned counsel for the petitioner/detenue that there was no danger to public order especially when the petitioner was already

in custody in FIR No.44/2021 registered with Police Station Budhal for the commission of offence punishable under Sections 295-A/429 IPC wherein no bail has been granted by the competent court of law till date and as such, no situation arise for slapping the detention order on the detenu. It is further submitted that the material relied upon by the detaining authority i.e., the dossier, the copy of FIR No.44/2021, the grounds of detention and the confidential reports submitted by District Special Branch, Rajouri, has never been supplied to the detenu or his brother. It is submitted that the detenu has made a representation on 31.05.2021 in absence of supply of above material, but the same has not been decided by the respondents till date.

4. Reply affidavit has been filed by respondents, objecting the petition.

5. Heard learned counsel for parties, considered their submissions and perused the record produced by learned counsel for the respondents.

6. A bare perusal of the detention order reveals that the detenu has been placed under detention vide detention order No. No.DMR/INDEX-02 of 2021 dated 20.05.2021, passed by District Magistrate, Rajouri, under Section 8 of Jammu and Kashmir Public Safety Act, 1978 (for short "*Act of 1978*") on the ground to maintain proper order, harmony and to prevent violence of any kind in the district and also to prevent the detenu from acting in any manner which is highly prejudicial to the maintenance of public order.

7. A bare perusal of record reveals that one Javed Manhas, Sub Inspector, No.876430/EXJ, Police Station Rajouri has taken the custody of detenu on 22.05.2021 and as such, executed the execution report to the detenu and handed over his custody to the Deputy Superintendent, Central Jail Kotbhalwal, Jammu on the same date. The execution report further reveals that the contents of detention warrant along with ground of detention was read over

to the detenu in English language and thereafter explained him in Pahari Language. It is contended that total eight number of leaves were handed over to detenu which include copy of detention warrant (03 leaves), grounds of detention (04 leaves) and notice of detention (01 leaf) against proper receipt.

8. On going through the record so produced it comes to the fore that the copy of dossier, copy of FIR No.44/2021 and the confidential reports submitted by District Special Branch, Rajouri bearing DD Report No.20 dated 14.05.2021, DD Report No.19 dated 17.05.2021 and DD Report No.10 dated 18.05.2021 of Police Post Khawas, have not been supplied to the detenu.

9. The failure on part of detaining authority to supply material relied at the time of making detention order against the detenu, renders detention order illegal and unsustainable. While holding so, support is drawn from law laid down in *ThahiraHaris Etc. Etc.v. Government of Karnataka (AIR 2009 SC 2184)* *Union of India v. Ranu Bhandari (2008, Cr. L. J. 4567)*; *DhannajoyDass v. District Magistrate (AIR, 1982 SC 1315)*; *Sofia Ghulam Mohammad Bam v. State of Maharashtra &ors(AIR, 1999, SC 3051)*; and *Syed AasiyaIndrabi v. State of J&K &ors(2009 (I) S.L.J 219)*; and *Union of India v. Ranu Bhandari (2008 Cr. L. J. 4567.)*;

10. Learned counsel for the detenu has vehemently argued that when the material relied upon by the detaining authority on the basis of which the detention order is passed, has not been supplied to the detenu, then the order of detention is liable to be quashed as the detenu could not make an effective representation to the respondents against his detention.

11. Article 22(5) of the Constitution provides a precious and valuable right to a person detained under preventive detention law - J&K Public Safety Act 1978, to make a representation against the detention. The detenu is held in custody on a mere suspicion that his apprehended activities may be prejudicial

to the maintenance of public order or security of the State. Article 22(5), Constitution of India and Section 13 of the Act, thus makes it obligatory for Detaining Authority to provide detenu an earliest opportunity of making an effective and meaningful representation against his detention. The object is to enable the detenu to convince the Detaining Authority and Government, as the case may be, that all apprehensions regarding his activities are grossly misplaced and his detention is unwarranted. To make the Constitutional and Statutory right available to detenu meaningful, it is necessary that detenu be informed with all possible clarity what is/are apprehended activity/ies that persuaded Detaining Authority to make detention order.

**12.** A person of ordinary prudence would not be in a position to explain his stand in reply to the grounds of detention detailed by the detaining authority. The detenu has been kept guessing about the facts and events that weighed with detaining authority and prompted detaining authority to record subjective satisfaction regarding sufficiency of the material to warrant preventive detention of detenu. It is well settled law that even where one of grounds, relied upon by Detaining Authority to order detention, is vague and ambiguous, Constitutional and Statutory right of detenu to make an effective representation against his detention are taken to have been violated. Reference in this regard may be made to law laid down in *State of Maharashtra &ors v. Santosh Shankar Acharya* case (supra); *Chaju Ram v. State of J&K AIR 1971 SC 263*; *Dr.RamKrishan v. The State of Delhi &ors. AIR 1953 SC 318*; *MohdYousuf Rather v. State of J&K AIR 1979 SC 1925*; and *GhulamNabi Shah v. State of J&K &ors. 2005(I) SLJ 251*.

**13.** It is crystal clear that the relevant documents like copy of FIR, copy of dossier and the copies of confidential reports relied upon by the respondents while issuing detention order, have not been supplied to the

detenue. Therefore, the violation of provisions of the Public Safety Act as well as Article 22(5) of the Constitution has been done by the respondents.

**14.** Thus, it is clear case of non-supply of relevant material to the detenue, to prevent the detenue from making an effective representation against his detention.

**15.** For the foregoing reasons, this petition is allowed and the impugned detention order bearing No. DMR/INDEX-02 of 2021 dated 20.05.2021, passed by District Magistrate, Rajouri, is quashed. Respondents are directed to release the detenue, namely, Ali Hayder son of Abdul Aziz resident of Village Gundha Tehsil Khawas, District Rajouri, forthwith, provided he is not required in any other case.

**16.** The petition is accordingly, disposed of on the above lines.

**17.** Record so produced be returned to the respondents against proper receipt.

Jammu  
09.12.2021  
*Surinder*

**(Tashi Rabstan)**  
**Judge**

Whether the order is speaking?

Yes/No

Whether the order is reportable?

Yes/No